IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 236 OF 1994

WITH

CROSS OBJECTION STAMP NO.15406 OF 1994

The State of Maharashtra ..Appellants

versus

Shankar Fakir Patil, since
deceased through his Legal heirs
Prakash S. Patil & Ors. ..Respondents

Mr. S. N. Gawade, AGP for the Appellants - State.
Mr. S. M. Oak for the Respondents No. 1 to 6.

CORAM : D. G. DESHPANDE,J.

DATE : 11TH FEBRUARY,2005

ORAL ORDER :

1. Heard learned AGP and counsel for the respondents. State of Maharashtra has initially filed this Appeal thereafter the claimants have filed their Cross Objection.

2. State of Maharasthra challenging the order of the Civil Court enhancing the compensation from Rs.10/- and Rs.12/- to Rs.30/-, Whereas the

claimants in their cross objection challenged the said award for not having granted escalation of price.

3. The land of the claimants situate at Village Wada admeasuring 8031 square meters from Survey No.265-A Hissa Nos. 2 and 3 and Survey No.265-B was acquired for the purpose of construction of building and residential quarters. Notification under Section 4 was dated 21.3.1985. SLAO awarded condensation at Rs.10/- and Rs.12/- to the claimant. He filed Reference under Section 18 and claimed Rs.70/- per sq. meter but the Court awarded him Rs.30/-, hence both the Appeal and Cross Objection, as stated above.

4. So far as the Appeal of the State is concerned, i.e. their challenge is to the enhancement of compensation, I do not find any merit. Firstly, the court came to the conclusion that there was no reason for SLAO to fix two prices of Rs.10/- and Rs.12/- for different lands; then the court held that SLAO has fixed the price initially at Rs.15/- per sq. meters, but then awarded only Rs.10/- and Rs.12/- without any reasons. Secondly the court relied upon Sale Deed executed by the claimants in favour of Dr. Yashwant Balaji Mate dated 14.4.1982 where he has sold the

land at Rs.30/- per sq. meter. It was this sale deed that was taken into consideration by the court as the basis for awarding compensation to the claimant at the rate of Rs.30/- per sq. meter.

5. Learned AGP for the State contended that enhancement of compensation is not justified. I do not find any merit in the same. When there is a sale deed which is of the relevant period even three years before the notification under Section 4, then the Court was justified in relying upon the same. Therefore, there is no merit in the Appeal of the State and it is required to be dismissed.

6. So far as Cross Objection is concerned, counsel for the claimants made only one submission i.e. that if the sale deed of claimant was of 1982 and the price therein was Rs.30/- per sq. meters and if the Notification under Section 4 for acquisition of the land was of 1985, then the claimants should have been granted escalation at 10% per year i.e. instead of Rs.30/-, Rs.39/- for three years, should have been granted.

7. The claimants are justified in claiming escalation at the above rate. Therefore the claimants are entitled to Rs.39/- and to make it a round figure it should be taken as Rs.40/- per

sq.meter. Therefore, the Cross Objection is required to be partly allowed.

8. In the result, I pass the following order:

ORDER

. Appeal No.236 of 1994 of the State is dismissed. No order as to costs.

. Cross Objection Stamp No. 15406 of 1994 is partly allowed. State to give compensation at the rate of Rs.40/- per sq.meter i.e. Rs.10/- in addition to whatever has been awarded by the lower court. The Claimants will also be entitled to additional solatium and interest at the rate of 9% per annum on the added amount as per the lower court’s order. No order as to costs.

11.2.2005 (D.G. DESHPANDE,J.)